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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SUNNYSIDE DEVELOPMENT  
COMPANY LLC,

Plaintiff,

vs.

CAMBRIDGE DISPLAY TECHNOLOGY  
LIMITED, CDT OXFORD LIMITED,  
OPSYS LIMITED, and JOHN DOES I  
through V,

Defendants.

No. C-08-1780-MHP

**REPLY MEMORANDUM IN  
SUPPORT OF MOTION OF  
DEFENDANT CAMBRIDGE  
DISPLAY TECHNOLOGY  
LIMITED TO STAY CASE  
PENDING APPEAL**

Date: September 8, 2008  
Time: 2:00 p.m.  
Courtroom 15, 18th Floor  
Hon. Marilyn Hall Patel

Filed herewith:  
Request for Judicial Notice (Dkt. 43)

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1     **I.     INTRODUCTION.**

2             Sunnyside’s opposition to the motion to stay this case pending appeal largely  
3 ignores the basis for the motion: (1) this Court has discretion to enter a stay, and (2) this  
4 Court should stay further proceedings pending the Ninth Circuit’s decision in *Sunnyside I*.

5             Instead, Sunnyside spends most of its time complaining that it was “sent . . . on a  
6 wild goose chase to New York” (Stay Opp., p. 1), suggesting that its New York litigation  
7 was needless, in addition to being unsuccessful. (Interestingly, Sunnyside never explains  
8 why it is still maintaining an appeal to the Second Circuit in the New York litigation, if it  
9 indeed is a “wild goose chase.”) For present purposes, though, even Sunnyside concedes  
10 that the New York proceedings are “wholly irrelevant” to the stay motion before this Court.  
11 Stay Opp., p. 3. Rather, the basis of this motion is Sunnyside’s appeal to the Ninth Circuit  
12 of this Court’s decision declining to add CDT Inc. to the judgment in *Sunnyside I*.  
13 *Sunnyside Dev. Co., LLC v. Opsys Limited*, No. C-05-553-MHP, 2007 WL 2462142, \*11  
14 (N.D. Cal. Aug. 29, 2007), *appeal pending*, No. 07-16773 (9th Cir.).

15             The *Sunnyside I* appeal involves an issue that Sunnyside has described as central to  
16 this case (*Sunnyside II*). See remarks of counsel for Sunnyside in the transcript of case  
17 management conference of July 21, 2008, at 5-6 (focusing on the May 2005 transaction and  
18 describing the 2002 and 2004 transactions as “more for background”). That issue is  
19 whether the May 2005 transfer of equity in CDT Oxford from Opsys Limited to defendant  
20 and movant **CAMBRIDGE DISPLAY TECHNOLOGY LIMITED** (“CDT Ltd.”) was a  
21 fraudulent transfer. This Court ruled in *Sunnyside I* that the May 2005 transfer was not a  
22 fraudulent transfer. *Sunnyside Dev. Co.*, 2007 WL 2462142, at \*11.

23             The principal argument of CDT Ltd. in its companion motion to dismiss is that the  
24 doctrines of issue preclusion and claim preclusion bar any re-litigation of that issue here, in  
25 *Sunnyside II*, and CDT Ltd. would prefer a dismissal to a stay. But should the Court  
26 decline to dismiss *Sunnyside II*, at the very least it should await the Ninth Circuit’s ruling  
27 on the fraudulent transfer issue in *Sunnyside I* before investing scarce judicial resources  
28 revisiting it here.

1 **II. ARGUMENT.**

2 **A. This Court has discretion to enter a stay.**

3 Sunnyside does not, and cannot, dispute that this Court has discretion to enter a stay.  
 4 *See* Stay Opp., p. 6. The Ninth Circuit has summarized the controlling principles: “A trial  
 5 court may, with propriety, find it is efficient for its own docket and the fairest course for the  
 6 parties to enter a stay of an action before it, pending resolution of independent proceedings  
 7 which bear upon the case. ... In such cases the court may order a stay of the action  
 8 pursuant to its power to control its docket and calendar and to provide for a just  
 9 determination of the cases pending before it.” *Leyva v. Certified Grocers of California,*  
 10 *Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (citations omitted). Indeed, the Ninth Circuit  
 11 case quoted by Sunnyside also recognizes that deciding whether to issue a stay is a matter  
 12 of weighing “the competing interests which will be affected by the granting or refusal to  
 13 grant a stay.” *Lockyer v. Mirant*, 398 F.3d 1098, 1010 (9th Cir. 2005).

14 Sunnyside is wrong in suggesting that a stay in this case will result in “a litigant in  
 15 one cause be[ing] compelled to stand aside while a litigant in another settles the rule of law  
 16 that will define the rights of both.” Stay Opp., p. 6; *quoting Landis v. North American Co.*,  
 17 299 U.S. 248, 255 (1936). Here, we are only asking that this Court stay further proceedings  
 18 until the Ninth Circuit settles the rule of law in *Sunnyside I*. Obviously, Sunnyside is a  
 19 party in the Ninth Circuit proceedings in *Sunnyside I*; indeed, it is the appellant and brought  
 20 those proceedings. Thus, Sunnyside is **not** being asked to stand aside as a helpless  
 21 bystander.

22 Citing the Supreme Court’s opinion in *Landis*, Sunnyside erroneously argues that  
 23 “[a] party seeking a stay of discovery pending a motion to dismiss ‘must make out a clear  
 24 case of hardship or inequity in being required to go forward. . .’” Stay Opp., p. 1. Yet,  
 25 *Landis* itself goes on to say that “[c]onsiderations such as these, however, are counsels of  
 26 moderation rather than limitations upon power.” 299 U.S. at 255. Indeed, the Ninth Circuit  
 27 has observed that it has “sustained, or authorized in principle, *Landis* stays on several  
 28 occasions.” *Lockyer*, 398 F.3d at 1110. These Ninth Circuit cases have been counseled by

the Supreme Court's guidance in *Landis* that: "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254-55. Sunnyside asserts, without support, that in *Sunnyside I* its "Rule 25 motion expressly reserved litigating its fraudulent conveyance claims against other entities." Stay Opp., p. 3.

**B. Should the Court not dismiss all of *Sunnyside II*, it should stay further procedures in *Sunnyside II* pending the Ninth Circuit's decision in *Sunnyside I*.**

In *Sunnyside I*, the Ninth Circuit is being asked to review this Court's ruling denying Sunnyside's motion pursuant to Rules 25(c) and 69 of the Federal Rules of Civil Procedure to add CDT Inc. to the judgment. If the Ninth Circuit affirms this Court's ruling, it doubtlessly would address this Court's ruling that the May 2005 transactions were not fraudulent. As this Court said:

Plaintiffs additionally point to the fact that defendants transferred CDT Oxford Limited from Opsys Limited to CDT Limited in 2005, while this action was pending, leaving Opsys Limited with no assets. Bunzel Dec. ¶ J. CDT, Inc. claims that these transfers were planned in late 2004, prior to the initiation of this lawsuit. Black Dec. ¶¶ 24-25. At the time of these transfers, CDT Limited, rather than CDT, Inc., was a defendant in this action. *Id.* An asset transfer between defendants is hardly an attempt to thwart a plaintiff's ability to collect. **These facts do not support a finding of fraudulent transfer.**

*Sunnyside Dev. Co.*, 2007 WL 2462142, at \*11 (emphasis added). The Ninth Circuit's ruling on this point should bind Sunnyside in the current proceedings in *Sunnyside II*.

Sunnyside's only response is its argument that the Ninth Circuit will be deciding whether CDT Inc. is liable, while the current action is against CDT Ltd. That misses the point: *Sunnyside I* and *Sunnyside II* both allege that the May 2005 transactions were fraudulent and involved fraudulent transfers. As the Court may verify for itself, the parties discuss the May 2005 transaction at length in their Ninth Circuit briefing. CDT Ltd. has provided all three of the Ninth Circuit briefs in its request for judicial notice filed herewith,

1 Dkt. 43. *See* Principal Brief of Appellant Sunnyside Development Company (Dkt. 43  
 2 Ex. A at 6-10, 16, 21-22, 27-28); Brief for Appellee Cambridge Display Technology, Inc.  
 3 (*id.* Ex. B at 2, 9, 27, 43-45); Reply Brief of Appellant Sunnyside Development Company  
 4 (*id.* Ex. C at 10, 14-15, 19). In its reply, Sunnyside expressly stated: “Sunnyside’s present  
 5 claim challenges Opsys Limited’s 2002 and 2005 transactions....” *Id.* Ex. C at 10.

6 Sunnyside also devotes several pages in its Ninth Circuit briefs to the same claim it  
 7 makes now in *Sunnyside II* that CDT Inc. mischaracterized the nature of the escrow account  
 8 created during the 2004 transactions. *Compare* Sunnyside’s opposition to CDT Ltd.’s  
 9 motion to dismiss (Dkt. 40), at 4, 8, 20, 21, 23 (seven references to “extravagant  
 10 mischaracterizations”) with Dkt. 43 Ex. A at 4, 12-13 and *id.* Ex. C at 17. CDT Inc.  
 11 responded to these arguments in its Ninth Circuit Brief (Dkt. 43 Ex. B at 35-37, 42 n.8), just  
 12 as it has in the current proceedings. *See* Reply Memorandum in Support of Defendant  
 13 Cambridge Display Technology Limited’s Motion to Dismiss Complaint, filed herewith.

14 Thus, there plainly is overlap between the two proceedings. In particular, the May  
 15 2005 transactions are at the heart of both proceedings. Both judicial economy and fairness  
 16 to the parties would be best served by awaiting the Ninth Circuit’s ruling on whether or not  
 17 the May 2005 transactions were fraudulent. Sunnyside does not deny that this Court held in  
 18 *Sunnyside I* that the May 2005 transactions were not fraudulent. An affirmance of that  
 19 ruling by the Ninth Circuit would, in all likelihood, bar most or all of Sunnyside’s  
 20 fraudulent conveyance claim in this proceeding.

### 21 **III. CONCLUSION.**

22 For the reasons stated above and in its Motion to Stay, CDT Ltd. submits that, if this  
 23 action is not dismissed pursuant to defendants’ motions to dismiss, it should, in the  
 24 alternative, be stayed pending resolution of the appeal in *Sunnyside I*.

25 Dated: August 25, 2008.

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